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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.C. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.C., Defendant and Appellant.	E071472 (Super.Ct.Nos. J271671, J271672, J271673 & J271674) OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander, Judge. Affirmed.

Maryann M. Goode, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant Do.C. (mother) is the mother of the three children who are the subjects of this dependency appeal—S.C. (born in Jan. 2015), M.C. (born in Feb. 2016) and D.C. (born in April 2017)—as well as D.C.'s twin, A.C. Mother appeals from orders terminating her parental rights over S.C., M.C., and D.C. and ordering them placed for adoption.[1] She argues the juvenile court should have instead applied the beneficial parental relationship exception and selected legal guardianship as the children's permanent plan. We affirm the challenged orders.

I. FACTUAL AND PROCEDURAL BACKGROUND

In June 2017, plaintiff and respondent San Bernardino County Children and Family Services (CFS) received a referral after A.C. suffered nearly fatal injuries "consistent with non-accidental trauma" while in the care of mother and the children's presumed father (father).[2] According to a forensic pediatrics specialist who examined him, A.C. had been violently shaken, causing extensive retinal hemorrhages in both eyes and brain injuries so severe that he stopped breathing and had to be revived by paramedics. Mother and father denied that any abuse had occurred.

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[1] Mother's parental rights over A.C. were not terminated because the plan chosen for him was a permanent planned living arrangement ("PPLA") with the specific goal of adoption. An adoptive parent had not yet been identified for A.C. due to the special care he now requires.

[2] Father is the biological father of the three younger children, but not S.C. He had, however, together with mother, raised S.C. since two weeks after her birth. S.C.'s biological father has not been identified; two men named by mother as possible biological fathers were excluded by paternity testing. Because father is not party to this appeal, he will be discussed only as necessary for context.

CFS filed Welfare and Institutions Code[3] section 300 petitions regarding all four children, and detained them out of parental custody. The petitions, as later amended, alleged that A.C. came within section 300, subdivisions (a) [serious physical harm], (b) [failure to protect], and (e) [severe physical abuse], and that the other children came within section 300, subdivisions (a), (b), and (j) [abuse of a sibling].[4]

At a jurisdiction/disposition hearing in March 2018, the juvenile court dismissed some of the allegations pleaded under subdivision (b), but otherwise sustained the petitions. The court ordered all four children removed from parental custody and declared them dependents.[5] As recommended by CFS, pursuant to section 361.5, subdivisions (b)(5) and (b)(7), the court ordered no reunification services for either parent, but the parents were permitted to continue visiting with the children pending a section 366.26 hearing.[6] The court made no finding as to whether it was mother or father

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[3] Further undesignated statutory references are to the Welfare and Institutions Code.

[4] An allegation under section 300, subdivision (g) [no provision for support] in S.C.'s petition was separately dismissed after paternity testing determined that the alleged father was not S.C.'s biological father.

[5] Disposition matters for S.C. were addressed separately in June 2018, after a continuance to allow time for paternity testing. In the end, however, the disposition of her case was the same as that of D.C. and M.C.

[6] Section 361.5 provides, in relevant part, that reunification services need not be provided to a parent or guardian if the court finds, by clear and convincing evidence, "[t]hat the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian," (§ 361.5, subd. (b)(5)) or

who was directly responsible for A.C.'s injuries, concluding only that he "nearly died by the hands of one parent or the other," and expressing concern that one of the parents knew the child was almost killed by the other, yet they still chose to live together.[7]

In section 366.26 reports, CFS recommended terminating parental rights and implementing permanent plans of adoption for S.C., M.C., and D.C. The children had been placed with the prospective adoptive parent, their maternal great-aunt, Ms. C., since they were removed from their parents' care in June 2017. The reports describe Ms. C. as "57 years old," "5 feet tall and . . . approximately 202 pounds." She has several chronic medical issues, but she told the social worker that they are well controlled by medication and she regularly visits the doctor for monitoring. The social worker reported that the children were thriving in Ms. C.'s care, and observed a close, loving, and stable relationship between Ms. C. and the children. The social worker opined that Ms. C. was "dedicated to [the children] and committed to raising them to adulthood."

During the dependency proceedings, mother regularly visited with S.C., M.C., and D.C. By all accounts, the visits went well. Mother was also in contact with the children via video chat when they did not see each other in person.

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"[t]hat the parent is not receiving reunification services for a sibling or a half sibling of the child pursuant to paragraph . . . (5) . . . ." (*Id.*, subd. (b)(7).)

[7] At the separate disposition hearing for S.C. in June 2018, the court invited mother's counsel to present additional affirmative evidence. Counsel responded as follows: "The only thing she wants to state that I know of new information today is she is no longer with the father." As noted, however, the juvenile court's disposition rulings regarding S.C. were the same as for D.C. and M.C.

At the section 366.26 hearing in October 2018, after hearing the evidence and argument presented by the parties, the juvenile court accepted CFS's recommendation to terminate parental rights and implement permanent plans of adoption for S.C., M.C., and D.C. The court found that the children were both generally and specifically adoptable, that they were likely to be adopted, and that no exceptions to adoption, including the parental relationship exception, applied. It found that mother had consistently visited the children, and acknowledged that the visitation "continues to be loving and appropriate," emphasizing that it had "no doubt" about mother's "love for the children." It noted, however, that it was Ms. C. who had met the children's "day-to-day needs" for a long time; the children had been "out of the home, for the youngest child [D.C.] almost her entire life . . . the majority of [M.C.'s] life, and a substantial portion of [S.C's] life." The court found no evidence of any detriment to the children from termination of parental rights, and in the alternative that "if there was any detriment, it's far outweighed by the permanency that would be achieved by adoption."

II. DISCUSSION

Mother contends that the juvenile court erred in ruling the parental relationship exception did not apply. We disagree.

A. *Applicable Law*

At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for a dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53.) "In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption [the choice the court made here]; (2) identify adoption as the permanent

placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care." (*Id.* at p. 53.) "Whenever the court finds 'that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.'" (*Ibid.*)

To avoid termination of parental rights, a parent must prove one or more statutory exceptions apply. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395 (*Anthony B.*) One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i), which applies when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." The parent has the burden of proving his or her relationship with the child would outweigh the wellbeing gained in a permanent home with an adoptive parent. (*Anthony B., supra,* at pp. 396-397.)

In determining the applicability of the parental relationship exception, the court considers "'"[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs."'" (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) "A showing the child derives some benefit from the relationship is not sufficient ground to depart from the statutory preference for adoption." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.) Furthermore, evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. (*Ibid.*) The parent must also show he or she occupies a parental role in the child's life. (*Ibid.*) "The relationship that gives rise to this exception to the statutory preference for adoption 'characteristically aris[es]

from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.'" (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

Our review of the juvenile court's ruling is deferential, incorporating both the substantial evidence and abuse of discretion standards. We generally review the juvenile court's finding as to the existence of a beneficial parental relationship for substantial evidence. (*Anthony B., supra*, 239 Cal.App.4th at p. 395.) But where the juvenile court found the parent failed to carry his or her burden of proof, the question is more properly stated not in terms of substantial evidence, but rather "whether the [appellant parent's] evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.'" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) We apply the abuse of discretion standard to the juvenile court's determination of whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption. (*Anthony B., supra*, at p. 395.) We will not reverse the juvenile court's order as an abuse of discretion unless the court made an arbitrary, capricious, or patently absurd determination. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

B. *Analysis*

The record amply supports the juvenile court's conclusion that mother failed to establish that she occupied a parental role in the children's lives.[8] The children were removed from mother's care at very young ages—S.C. was about two and one-half years old, M.C. was about one and one-half years old, and D.C. was two months old. It is undisputed that mother maintained consistent visitation with the children after removal, and that the visits went well. But this evidence of frequent and loving contact is not enough to establish that she occupied a parental role in the children's lives. (See *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) The juvenile court reasonably concluded that the parental role was occupied by their day-to-day caretaker and prospective adoptive parent, Ms. C.

Furthermore, even if mother had demonstrated the existence of a beneficial parental relationship, the juvenile court did not abuse its discretion by determining that the benefits of the children's relationship with mother were outweighed by the benefits of adoption. A.C., as an infant, had nearly died while in mother's care. Although mother's interactions with S.C., M.C., and D.C. during visitation were positive, there is little if anything in the record to support the conclusion that she ever accepted that A.C. *was* the victim of severe abuse, let alone that she took responsibility for her role in that abuse or the failure to prevent it, or took action to ensure it would never happen again. In contrast,

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[8] The juvenile court's phrasing was not unambiguous, but we so understand its finding. In any case, the disposition of this appeal does not turn on whether or not mother established that she occupied a parental role, as discussed below.

Ms. C. demonstrated that she was ready, willing, and able to provide the children with a safe, stable, and loving home, and had already done so for more than a year. Mother suggests in briefing on appeal that Ms. C.'s age and physical condition are a "concern." But she fails to make any reasoned argument why the juvenile court was required to give greater weight than it did to speculation that Ms. C.'s future health was a concern.

Mother suggests that this case is like *In re S.B.* (2008) 164 Cal.App.4th 289, 299-300, citing it in support of her argument that "even if a child has a primary relationship with the foster parent, the beneficial relationship exception can still apply if the child also shares a substantial and positive emotional attachment to the parent." The facts of *In re S.B.* are different, however, from those of this case. In that case there were no allegations of child abuse, let alone severe abuse of the sort inflicted on A.C.; rather, the dependency arose when child's father was arrested on drug-related charges. (*In re S.B.*, *supra*, at p. 293.) The father in *In re S.B.* immediately took responsibility for the conditions that led to the dependency and took action to remedy them, complying with every aspect of his case plan, including maintaining his sobriety and consistently visiting with the child. (*Ibid*.) As discussed above, here, mother did not similarly take responsibility for remedying the conditions that led to the dependency. In *In re S.B.,* the father had been the child's primary caregiver for three years before removal, and a bonding study conducted a year and a half after removal still found a "fairly strong" bond between them. (*Id.* at pp. 295-296, 298.) The expert who conducted the bonding study opined that there was a potential for harm to the child if she were to lose the parent-child relationship. (*Id.* at p. 296.) Here, mother was the primary caregiver of even the oldest of the children for

a shorter period of time, no bonding study was conducted, and the social worker opined that termination of parental rights would not be detrimental. At most, applied to this case, *In re S.B.* supports the proposition that the juvenile court could have found the parental relationship exception to apply, even though the children have also formed a primary parental relationship with Ms. C. (See *id.* at p. 300 ["We believe it is a self-evident proposition that at any one time a child may have more than one parent or person acting as a parent."].) It does not support the proposition that the juvenile court exceeded the bounds of reason by finding otherwise.

In sum, mother has not demonstrated that the juvenile court abused its discretion in determining that the benefits of adoption outweigh any detriment the children may suffer from the termination of her parental relationship with them.

III. DISPOSITION

The judgment is affirmed.

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RAPHAEL
J.

We concur:

CODRINGTON
Acting P. J.

FIELDS
J.